

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re: : Case No. 10-62903
US Route 23 Supply, LLC, : Chapter 7
Debtor. : Judge Charles M. Caldwell

TRUSTEE'S OBJECTION TO CLAIMS NUMBERED 19 AND 21
OF THE OHIO DEPARTMENT OF TAXATION
AND RECOMMENDATION FOR ALLOWANCE

Larry J. McClatchey, Trustee, objects to the allowance of Claims numbered 19 and 21 of the Ohio Department of Taxation, P.O. Box 530, Columbus, Ohio 43216-0530, which were filed with the Court on December 5, 2011 and February 3, 2012, respectively. The reason for the objection is that the claims were filed as administrative claims. However, § 348(d) of the United States Bankruptcy Code provides that upon conversion, a claim against the estate or the debtor that arises after the order for relief “other than a claim specified in section 503(b)” is treated as if the claim arose *pre-petition*. Since tax claims of a kind specified in § 507(a)(8) are not “specified in section 503(b)”, unsecured trust fund tax claims specified in § 507(a)(8) are treated as if the claim arose *prepetition*.

In addition, penalties on tax claims are not “compensation for actual pecuniary loss”. Therefore, penalties on tax claims that arose *pre-petition* are subordinated to general unsecured creditors, § 726(a)(4). In a converted case, penalties incurred in respect of taxes that arose *post-petition* but *pre-conversion* are subject to equitable subordination under § 510(c), *In re First Truck Lines*, 141 BR 621 (Bankr. SD Ohio 1992).

Wherefore, the Trustee respectfully requests that this Court enter an Order allowing Claims numbered 19 and 21 of the Ohio Department of Taxation as unsecured, priority claims for the tax and

interest portion of the claims and as unsecured, non-priority claims for the penalty portion of the claims, as set forth in §§ 507 and 726. Trustee requests that the claims be treated as follows:

Claim 19 - Unsecured Priority Portion: \$4,855.43
Unsecured, Non-Priority Portion: \$1,051.45

Claim 21 - Unsecured Priority Portion: \$10,897.43
Unsecured, Non-Priority Portion: \$5,256.35

/s/ Larry J. McClatchey
Larry J. McClatchey (0012191)
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Trustee and Attorney for Trustee

NOTICE AND CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that Larry J. McClatchey, Trustee filed an objection to claim filed by the Ohio Department of Taxation.

PLEASE TAKE FURTHER NOTICE that your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this Bankruptcy case. If you do not have an attorney, you may wish to consult one. If you do not want the Court to eliminate or change your claim, then on or before **thirty (30) days from the date set forth in the certificate of service for the objection to claim noted below** ("Response Date"), you or your lawyer must file with the court a response explaining your position by mailing your response by regular US Mail to the Clerk of the United States Bankruptcy Court, 170 North High Street, Columbus, Ohio 43215 OR your attorney must file a response using the court's ECF System. The court must **receive** your response on or before the Response Date.

You must also send a copy of your response on or before the Response Date by 1) the Court's ECF System or 2) by regular US Mail to Trustee's counsel, Larry J. McClatchey, Kegler Brown Hill & Ritter, 65 East State Street, Suite 1800, Columbus, Ohio 43215. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the and may grant the motion or objection and may enter an order granting that relief.

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2012 a copy of the foregoing *Objection to Claims of The Ohio Department of Taxation* was served on the following registered ECF participants, **electronically**, through the Court's ECF System at the email address registered with the court:

Pamela Arndt Pamela.D.Arndt@usdoj.gov
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and on the following by ordinary US Mail addressed to:

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/s/ Larry J. McClatchey
Larry J. McClatchey